

Senator Charles Poochigian



WORKERS' COMPENSATION CONFERENCE COMMITTEE UPDATE II

NOTES FROM THE SENATE REPUBLICAN CAUCUS CHAIRMAN

"The workers' compensation 'deal' unveiled to the conference committee yesterday falls far short of the mark. Real reform must include all of the cost drivers including reforms to the arbitrary and inconsistent permanent disability rating system and a curb on the outrageous litigation expenses in the system. While some of the proposed reforms are supportable, California's small businesses are withering on the vine as the Legislature and Governor fail to pass the massive overhaul legislation that is needed to truly fix the system."

– Senator Chuck Poochigian

With only three days remaining in this year's session, the Legislature finally unveiled its proposals to reform the workers' compensation system. Many decried the undemocratic process since amendments to Senate Bill 228 and Assembly Bill 227 were held from public view until minutes before the vote was scheduled. Despite the insufficient amount of time available to read and analyze the proposal, the proposal passed the committee with only the four Democrat members voting for the proposal.

SAVINGS HAVE YET TO BE VERIFIED

The author of the measure announced that the package is estimated to save \$4.6 billion from the system, but neither the Workers' Compensation Insurance Rating Bureau nor Insurance Commissioner Garamendi could verify the accuracy of these estimates.

Last week, when the committee met, it heard testimony regarding the cost estimates of reform measures from the Workers' Compensation Insurance Rating Bureau (WCIRB) – the official actuarial agent charged with developing the advisory pure premium rate for the Insurance Commissioner. When the WCIRB staff reviewed the proposal, they were simply unable to provide cost estimates of key elements of the proposals. In fact, they could identify just \$2.5 billion in savings!

Senator Jim Brulte,
Republican Leader

Senators:

Sam Aanestad

Dick Ackerman

Roy Ashburn

Jim Battin

Jeff Denham

Dennis Hollingsworth

Ross Johnson

William J. "Pete" Knight

Bob Margett

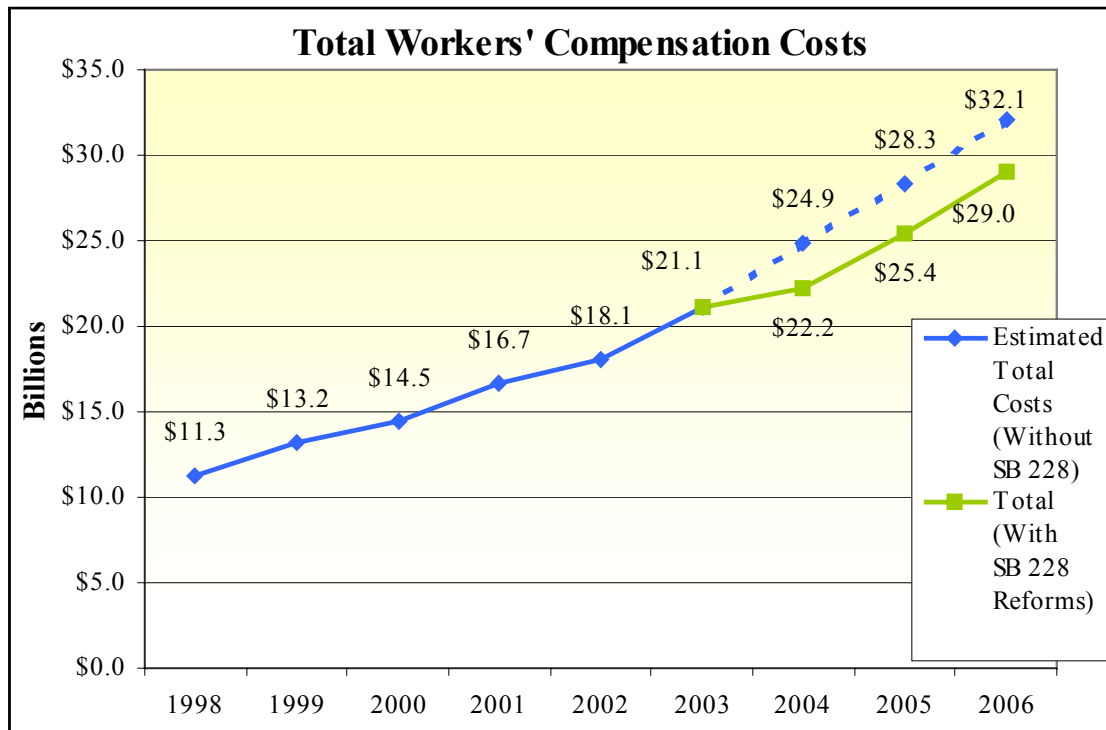
Tom McClintock

Bruce McPherson

Bill Morrow

Rico Oller

Chuck Poochigian



Source: Figures from WCIRB

As the figures from the WCIRB indicate, even with the reforms outlined in last week's version of SB 228, California employers will still face premiums which are close to \$30 billion by 2006. An updated analysis is being developed by the WCIRB.

LINK TO THE HEALTH CARE PROPOSAL

Earlier in the evening, another special committee put the finishing touches on a universal health care mandate, dubbed "pay or play," which requires businesses with 50 or more employees to maintain significant levels of health care for their employees or pay a tax so that government can provide health care. While the bills are not technically linked, many have connected the proposals since the reduction in workers' compensation premiums that may result from the reforms will, at best, merely offset the massive burden facing businesses as a result of the health care mandate. Given the offsetting nature of the two proposals, many small businesses may obtain little or no relief from the workers' compensation reforms.

MAJOR HIGHLIGHTS OF THE BILLS

- Reduces by 5% across-the-board payments to doctors and other medical providers (exempts those whose rates are at or below Medicare rates).
- Establishes an outpatient facility fee based on the Medicare system's schedule (a 20% augmentation would be added to the Medicare rate).
- Provides full discretion to the Division of Workers' Compensation to increase the rates in these schedules if there is an "access to care" problem.
- Limits chiropractic and physical therapy visits to 24 for the life of the claim.
- Eliminates the Vocational Rehabilitation program and creates in its place a voucher system to provide \$4,000 to \$10,000 worth of education assistance to those who aren't offered a modified job by their employers. The bill failed to amend the definition of "compensation" to eliminate vocational rehabilitation as a benefit. Therefore, some argue that without definitional

changes employers may be liable for vocational rehabilitation benefits – on top of the new one created by this bill.

- Establishes a schedule and process for utilization review. Unfortunately, the proposal does not contain all of the components identified by the Insurance Commissioner which are necessary to stave off the ever-present threat of litigation and to generate the cost savings projected by the bill's author.
- Eliminates the primary treating physician's presumption for injuries which occurred between 1994 and 2003.
- Increases the tax paid by all employers by 500%. The tax is used to fund the administration of the system and will increase costs by \$80 million annually – from \$20 million to \$100 million.

WHAT IS MISSING

The SB 228 and AB 227 package represents a somewhat arbitrary reduction of costs from various stakeholders in the system, but does very little to fix the underlying structure of this convoluted, inefficient and costly system. Additional urgent reforms which were refused by the committee would have:

- Mandated objective medical findings to determine permanent disability.
- Rationalized the permanent disability rating system by infusing fairness, consistency and objectivity.
- Provided the employer the right to choose the medical provider for 365 days, rather than 30 days.
- Corrected the definition of what it means to "cure and relieve" injured employees so that it is evidence-based.
- Suspended the COLA growth included in TD, beginning in 2006.
- Curtailed the abuse of stress claims.
- Eliminated non-work related injuries from the system (provides predominant cause standard).
- Eliminated California's unique, ineffective and costly vocational rehabilitation program.
- Significantly curbed the litigation costs in the system.
- Required apportionment when injury is to the same part of the body.
- Prohibited prisoners from receiving workers' compensation.

Senator Poochigian proposed SB 899, which would have effectuated these reforms, during last night's committee hearing. Despite recognition by all of the members of the committee that the system needs additional reforms in order to truly fix the system, SB 899 failed on a party-line procedural vote 4 to 2.

CONTACT INFORMATION

Senator Poochigian's website can be found by visiting: <http://republican.sen.ca.gov/web/14> .

CAPITOL OFFICE
(916) 445-9600

FRESNO OFFICE
(559) 253-7122

RIPON OFFICE
(209) 599-8540